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In the Supreme Court of the United States

OCTOBER TERM, 1980

JOSHUA C. AGSALUD, Director of Labor and Industrial Relations of the State of Hawaii; and ORLANDO K. WATANABE, Administrator of the Disability Compensation Division of the Department of Labor and Industrial Relations of the State of Hawaii,
Appellants,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,
Appellee.

On Appeal from the United States Court of Appeals For the Ninth Circuit

Motion to Dismiss or Affirm

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QUESTIONS PRESENTED FOR REVIEW

1. Is the Hawaii Prepaid Health Care Act—which requires employers in Hawaii to provide employees with coverage of hospital and medical costs related to all nonoccupational illness and injury, whether disabling or not—a "disability insurance law" within the meaning of § 4(b)(3) of ERISA?

2. Is the ruling below that ERISA preempts the Hawaii Prepaid Health Care Act consistent with the ERISA preemption principles expressed by the state and Federal courts, including this Court?*

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*The parties are set forth in the title. Standard Oil Company of California owns stock in the following publicly owned corporations:

Huntington Beach Co.
AMAX, Inc.
Cetus Corp.

Standard Oil Company of California also owns stock in the following corporations: American Overseas Petroleum Limited; Pars Investment Corporation; Caltex Petroleum Companies; Irving Oil Company, Limited; Irving Oil Limited; Trans Mountain Oil Pipe Line Company; C-W Properties, Inc.; Glenwood Properties; Arabian American Oil Company; Calpam B.V.; Caltex (Kalteks) Petrol Amonim Sirketi; Caltex Mediterranean Limited; Caltex Oil, Sociedad Anonima Espanola; Caltex Deutschland G.m.b.H.; Deutscher Kraftverkehr Ernst Grimmke; Chevron Transport Corporation; N.V. Rotterdam-Rijn Pijpleiding Maatschappij; Societa per Azioni Raffineria Padana Olii Minerali SARPOM; The Associated Octel Company Limited; Societe d'Etude et d'Exploitation de la Raffinerie du Tchad; Chevron Oil Company of Portugal; Rimbey Pipe Line Co., Ltd.; Sultran Ltd.; Chevron Transport Corporation; First Colony Life Insurance Company; Iranian Oil Participants Ltd.; Iranian Oil Services (Holdings) Ltd.; Oil Insurance Limited; P.T. Caltex Pacific Indonesia; Refineria Petrolera de Guatemala-California, Inc.; Aditivos Mexicanos, S.A.; Cansulex Limited; BP-California Limited; Coromandel Fertilisers Limited; Karonite Chemical Company, Limited; Nippon Petroleum Detergent Company, Limited; Orobis Limited; Orogil, S.A.; Petrosynthese, S.A.; Societe Calgil.

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I. Congress has refused to legislatively overturn the case at bar, negating any possible need for further argument. In any event, the Hawaii Prepaid Health Care Act—which requires employers in Hawaii to provide employees with coverage of hospital and medical costs related to all nonoccupational illness and injury, whether disabling or not—is not a "disability insurance law" within the meaning of § 4(b)(3) of ERISA 7

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In the Supreme Court of the United States

OCTOBER TERM, 1980

JOSHUA C. AGSALUD, Director of Labor and Industrial Relations of the State of Hawaii; and ORLANDO K. WATANABE, Administrator of the Disability Compensation Division of the Department of Labor and Industrial Relations of the State of Hawaii,
Appellants,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,
Appellee.

On Appeal from the United States Court of Appeals For the Ninth Circuit

Motion to Dismiss or Affirm

Appellee in the above-entitled case moves to dismiss or affirm on the ground that the questions presented are so unsubstantial as not to need further argument.

STATEMENT OF THE CASE

Appellee Standard Oil Company of California ("Standard"), an employer engaged in interstate commerce, provides its employees with a self-funded health care plan ("medical plan") which reimburses 80 per cent or more of covered medical expenses incurred by participating employees, annuitants, and their dependents (Jur.St.Appx. B,

pp. A-11 to A-12). The medical plan covers more than 25,000 participants throughout the United States, of whom some 337 reside in Hawaii.

Standard's medical plan was designed to comply with, and operate pursuant to, the terms of the Employee Retirement Income Security Act of 1974 ("ERISA"; Jur.St. Appx. G, pp. A-67 to A-68). Standard maintains separate plans and procedures for complying with the Hawaii disability insurance, workers' compensation and unemployment compensation laws.

ERISA regulates private employee benefit and pension plans and establishes standards relating to the administration of those plans (Jur.St.Appx. B, pp. A-10 to A-11). The provisions of ERISA are broadly applicable to employee benefit plans established by employers engaged in interstate commerce (ERISA, § 4(a)). "Employee benefit plan" means an employee welfare plan as defined in § 3(1) of ERISA as:

> "* * * any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment * * *" (Jur.St.Appx. G, p. A-67).

Standard's medical plan is maintained for the purpose of providing medical, surgical, and hospital benefits (Jur.St. Appx. B, p. A-14).

Section 514(a) of ERISA provides:

> "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III

> of this chapter *shall supersede any and all State laws* insofar as they may now or hereafter relate to any employee benefit plan described in section [4(a)] and not exempt under section [4(b)]" (Jur.St.Appx. G, p. A-68; emphasis added).

In 1974, shortly after ERISA was enacted, Hawaii enacted the Hawaii Prepaid Health Care Act ("Hawaii Act") which requires employers in that state to provide their employees with a comprehensive prepaid health care plan (Jur.St.Appx. A, p. A-11). The Hawaii Act contains reporting requirements which differ from those of ERISA (ibid.). It also requires that plans provide specified benefits not required by ERISA (ibid.). On the other hand, the Hawaii Act, unlike ERISA, contains no provisions which seek to ensure the financial integrity of benefit plans (ERISA, §§ 101-106, 402(a), 402(b), 403, 404-407, 409, 411, 412, 501-502).

The United States Department of Labor, which has the responsibility of administering ERISA, determined that ERISA preempts the Hawaii Act (Jur.St.Appx. B, p. A-31). The Department specifically found:

> "In your letter you noted the exception of section 4(b)(3) for plans 'maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws.' State laws requiring plans for any of the enumerated purposes would not be within the scope of preemption since the exception from coverage discloses an explicit federal policy of leaving those laws intact. However, we believe that the provision of basic health care is fundamentally different and distinguishable from the three listed purposes, each of which provides at least partially for income replacement rather than the prevention and treatment of illness. The three

statutory purposes are to provide income replacement in the event of disability, unemployment or job-related injuries. Basic health care might be made available to disabled, unemployed or injured workers, but the nature of the service provided would still be unrelated to income replacement" (Clerk's Record (9 Cir.) Vol. I, p. 50).

Notwithstanding the Department's opinion, appellants, in their official capacities as administrators of the Hawaii Act, attempted to enforce the Hawaii Act against Standard (Jur.St.Appx. A, p. A-2). Standard filed this suit in the United States District Court for the Northern District of California seeking declaratory and injunctive relief to prevent such enforcement (Jur.St.Appx. B, p. A-12).

The district court ruled that Standard's medical plan is subject to ERISA, that ERISA preempts the Hawaii Act insofar as it applies to Standard's medical plan, and that preemption is constitutional (Jur.St.Appx. B).

An appeal was taken to the Court of Appeals for the Ninth Circuit, which affirmed the district court's decision. The Court of Appeals held that Standard's medical plan is an employee benefit plan within the meaning of ERISA and that the Hawaii Act was preempted by ERISA (Jur.St. Appx. A, pp. A-3 to A-4, A-7 to A-9). The Court of Appeals rejected appellants' argument that Standard's medical plan is maintained solely for the purpose of complying with disability insurance laws and thus exempt from ERISA under § 4(b)(3) (Jur.St.Appx. A, pp. A-4 to A-5). It held that the Hawaii Act is not a "disability insurance law" within the meaning of § 4(b)(3) and, accordingly, that the exemption is not applicable (ibid.). On December 16, 1980, the Court of Appeals denied appellants' petition for a rehearing (Jur.St.Appx. D).

ARGUMENT

There is no need for further consideration by this Court because Congress has already refused to do what appellants are requesting of the Court—effect a reversal of the decision in the case at bar. As part of the Multiemployer Pension Plan Amendments Act of 1980 (94 Stat. 1208), an amendment to ERISA was proposed which would have exempted the Hawaii Act from the preemption provision of § 514 of ERISA (126 Cong.Rec. (July 29, 1980) S 10199). Congress, having knowledge of the decision in this very case (126 Cong.Rec. (July 29, 1980) S 10165-67; 126 Cong. Rec. (Aug. 26, 1980) S 11674-75; 126 Cong.Rec. (Sept. 24, 1980) S 13350-51), refused to enact the proposed amendment; it chose *not* to exempt the Hawaii Act from ERISA preemption.

Congress' 1980 refusal to amend ERISA to accommodate Hawaii was also entirely consistent with the purpose and language of ERISA which the two lower courts and the Department of Labor had found to be clear as applied to the Hawaii Act. When ERISA was first passed in 1974, Congress stated that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" (Jur.St.Appx. G, p. A-68) having the purpose, as pointed out by Senator Williams, Chairman of the Senate Committee on Labor and Public Welfare, "that *with the narrow exceptions specified in the bill,* the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans" (120 Cong.Rec. (Aug. 22, 1974) S 15742; emphasis added).

Appellants' assertion that the Hawaii Act is a "disability insurance law" within the meaning of § 4(b)(3) was properly rejected by the Court of Appeals:

> "Disability insurance compensates people who, because of disability, are unable to perform their normal employment duties. * * * Hawaii's law, on the other hand, is concerned with benefits regardless of any relationship to a disabling condition" (Jur.St.Appx. A, pp. A-4 to A-5).

Appellants' interpretation of "disability insurance law" would allow any state to circumvent Congress' preemptive intent by simply enacting state health insurance laws such as Hawaii's. Such an interpretation is not only contrary to the purpose of ERISA, but was recently rejected in *Alessi v. Raybestos-Manhattan, Inc.* (May 18, 1981) No. 79-1943, 49 U.S.L.W. 4503, where the Court held that "ERISA's authors clearly meant to preclude the states from avoiding through form the substance of the pre-emptive provision" (49 U.S.L.W. 4508). The ruling below is entirely consistent with that principle.

Alessi also negates appellants' only other argument for reversal, that the state and Federal courts need guidance as to ERISA preemption principles generally. In that case, the Court amply explained the ERISA preemption principles. Appellants' argument also ignores the clear language of ERISA: as the courts below pointed out, the ERISA preemption clause "provides that ERISA shall supersede 'any and all State laws' and that does not mean 'some but not all State laws'" (Jur.St.Appx. A, p. A-8; see also Jur.St.Appx. B, p. A-37). As the Court of Appeals noted, the Hawaii Act directly and expressly regulates employee benefit plans such as appellee's (Jur.St.Appx. A, p. A-9). This direct regulation of an area of exclusive Federal concern is necessarily preempted by ERISA.

I. CONGRESS HAS REFUSED TO LEGISLATIVELY OVERTURN THE CASE AT BAR, NEGATING ANY POSSIBLE NEED FOR FURTHER ARGUMENT. IN ANY EVENT, THE HAWAII PREPAID HEALTH CARE ACT—WHICH REQUIRES EMPLOYERS IN HAWAII TO PROVIDE EMPLOYEES WITH COVERAGE OF HOSPITAL AND MEDICAL COSTS RELATED TO ALL NONOCCUPATIONAL ILLNESS AND INJURY, WHETHER DISABLING OR NOT—IS NOT A "DISABILITY INSURANCE LAW" WITHIN THE MEANING OF § 4(b)(3) OF ERISA.

In rejecting appellants' argument that the courts should expand the narrow exemption from ERISA preemption, the district court concluded that Hawaii's "remedy, if a remedy is necessary, is not in this Court but in Congress" (Jur.St. Appx. B, p. A-48). In fact, Hawaii brought the district court's decision to Congress' attention and urged Congress to amend ERISA to exempt the Hawaii Act from preemption (126 Cong.Rec. (July 29, 1980) S 10165-67; 126 Cong.Rec. (Aug. 26, 1980) S 11674-75; 126 Cong.Rec. (Sept. 24, 1980) S 13350-51). Congress, however, declined to do so. Having failed to convince Congress that ERISA should be amended, Hawaii now, in effect, urges this Court to amend ERISA by judicially expanding the narrow exemption from ERISA preemption. Appellants' arguments are contrary not only to the clear terms of ERISA but also to Congress' intent as demonstrated throughout ERISA's legislative history.

Section 4(b)(3) of ERISA provides that ERISA does not apply to any plans

> "• • • maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws" (Jur.St.Appx. G, p. A-68).

The Hawaii Act requires the provision of benefits to employees regardless of their ability to work, and therefore

it is not a disability insurance law. As the Court of Appeals explained,

> "Disability insurance compensates people who, because of disability, are unable to perform their normal employment duties. * * * Hawaii's law, on the other hand, is concerned with benefits regardless of any relationship to a disabling condition" (Jur.St.Appx. A, pp. A-4 to A-5).

The United States Department of Labor, charged with administration of ERISA, has reached the same conclusion —that the Hawaii Act does not fall within the disability insurance law exception of § 4(b)(3) (Jur.St.Appx. B, p. A-31). Appellants themselves admitted in the proceedings below that disability (i.e., inability to work) is an essential element of disability insurance laws:

> "Since the primary purpose of Disability Insurance Law is protection of income, disability was not defined in medical terms but rather on inability to work at regular employment and thereby maintain income during temporary illnesses or injuries" (App.Opn.Br. (9 Cir.), p. 12).

Equally telling is the fact that the author of the Hawaii Act has also determined that it is not a disability insurance law, as that term is used in ERISA:

> "There also seems to be no room for doubt that the Hawaiian law is a health insurance law providing mandatory health care coverage and not a workers' compensation disability insurance or unemployment compensation act as specifically exempted by Sec. 4(b)(3), 29 U.S.C. § 1003(b)(3)" (Clerk's Record (9 Cir.), Vol. II, p. 500).

Moreover, appellants ignore the legislative history of ERISA which demonstrates a clear Congressional intent to define narrowly the exemptions from preemption:

Congressman John Dent, Chairman of the Subcommittee on Labor of the House Labor and Education Committee, stated on the floor of the House of Representatives:

> "Finally I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority the sole power to regulate the field of employee benefit plans.* * *
>
> "The conferees, *with the narrow exceptions specifically enumerated*, applied this principle in its broadest sense to foreclose any non-Federal regulation of employee benefit plans" (120 Cong.Rec. (Aug. 20, 1974) H 8701; emphasis added).[1]

Senator Jacob Javits expressly stated the necessity for preempting state legislation:

> "Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs. The conferees—recognizing the dimensions of such a policy—also agreed to assign the Congressional Pension Task Force the responsibility of studying and evaluating preemption in connection with State authorities and reporting its findings to the Congress. If it is determined that the preemption policy devised has the effect of precluding essential legislation at either the State or Federal level, appropriate modifications can be made" (120 Cong.Rec. (Aug. 22, 1974) S 15751).

And, as shown above, Congress declined to amend ERISA to exempt the Hawaii Act from preemption. This also

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1. See also the Statement of Senator Harrison Williams, Jr., Chairman of the Senate Committee on Labor and Public Welfare, quoted at page 5.

answers appellants' argument that the Court should expand the § 4(b)(3) exemption to include experimental programs such as Hawaii's (Jur.St., pp. 7, 14).

Appellants erroneously rely on several state regulatory statutes which define "disability insurance" to include all forms of health insurance (Jur.St., pp. 12-13). These statutes are simply irrelevant to the issue at hand—whether or not the Hawaii Act is a "disability insurance law" within the meaning of ERISA. Appellants simply ignore the fact that § 4(b)(3) exempts only plans maintained solely to comply with applicable "disability insurance *laws*." Not one of the statutes cited by appellants is a "disability insurance law." In fact, all state "disability insurance laws," contrary to the Hawaii Act, require that one be disabled in order to be entitled to benefits. Further, the disability insurance laws with which Congress is perhaps most familiar, the disability insurance provisions of the Social Security Act (42 U.S.C. § 401, et seq.), as well as the Federal Railroad Unemployment Insurance Act (45 U.S.C. §§ 351-367), provide disability benefits only to employees unable to work because of illness or injury.

In addition, the legislative history of the Welfare and Pension Plans Disclosure Act of 1958 (72 Stat. 997; repealed by § 111(a)(1) of ERISA, 29 U.S.C. § 1031(a)(1)) provides guidance to Congress' intent in ERISA. In recommending a bill which eventually became the forerunner of ERISA, the Senate Committee on Labor and Public Welfare stated that "temporary disability insurance laws of a few of the States * * * are designed to replace, in part, the loss of the wages of the family breadwinner *during periods of temporary disability*" (S.Rept. 1440, 85th Cong., 2d Sess., p. 6, 1958 U.S. Cong. & Admin. News, p. 4142; emphasis added).

The narrow exemption of § 4(b)(3) was intended to be limited to disability insurance laws *as they then existed in*

several states—laws which provided benefits only to those who were disabled.[2] Any broader exemption would raise the possibility of "opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme" (120 Cong.Rec. (Aug. 22, 1974) S 15751).

Even assuming that the Hawaii Act is a disability insurance law, the exemption of § 4(b)(3) is inapplicable because Standard's medical plan is not maintained *solely* for the purpose of complying with the Hawaii Act. In *Alessi v. Raybestos-Manhattan, Inc.* (May 18, 1981) No. 79-1943, 49 U.S.L.W. 4503, this Court noted that the ERISA §4(b)(3) exemption does not apply to plans that broadly serve employee needs beyond compliance with state laws (49 U.S.L.W. 4508, n. 20). In the case at bar, the district court observed that "the Hawaii Act regulates a type of employee benefit plan generally and historically maintained for other reasons [besides compliance with state laws]" (Jur.St. Appx. B, p. A-31). Thus, not only does the Hawaii Act fail to fall within the definition of "disability insurance plan," but also it does not regulate plans "maintained solely" for the purpose of complying with state laws, as required by §4(b)(3).

II. THE RULING BELOW THAT ERISA PREEMPTS THE HAWAII ACT IS CONSISTENT WITH THE ERISA PREEMPTION PRINCIPLES EXPRESSED BY THE STATE AND FEDERAL COURTS, INCLUDING THIS COURT.

As shown above, the Court's decision in *Alessi* (49 U.S.L.W. 4503) and the terms and legislative history of

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2. See, e.g., Haw.Rev.Stat. § 392-3(5) (Hawaii Temporary Disability Insurance Law); Cal.Unemp.Ins.Code § 2626 (West); N.Y. Work.Comp. § 201(9) (McKinney); N.J.Stat.Ann. § 43:21-29 (West) (Temporary Disability Benefits Law); R.I.Gen.Laws § 28-39-2(14) (R.I.Temporary Disability Insurance Act); 11 P.R.Laws Ann. § 202(g) (Disability Benefits Act).

ERISA completely refute appellants' argument that the state and Federal courts need guidance from this Court as to ERISA preemption principles generally (Jur.St., pp. 14-20). This Court's *Alessi* opinion should dispel any doubt as to the question posed by appellants—"whether § 514(a) must be read at its broadest and any exceptions at their narrowest" (Jur.St., p. 16). The broad language of § 514(a) demonstrates that Congress intended to depart from any previous legislation that envisioned the exercise of state regulation over employee benefit and pension plans (*Alessi v. Raybestos-Manhattan, Inc.* (May 18, 1981) No. 79-1943, 49 U.S.L.W. 4503, 4507-08).

Appellants also contend that the ruling below is inconsistent with the ERISA principles expressed by the state and Federal courts in cases involving the application of community property, alimony, and child support laws to employee benefit plans. In particular, appellants assert that the ruling below is inconsistent with decisions such as *Stone v. Stone* (N.D.Cal. 1978) 450 F.Supp. 919, affirmed (9 Cir. 1980) 632 F.2d 740, which have held that Congress did not intend ERISA to preempt state domestic relations law. In arguing that the Hawaii Act should be subject to a similar exemption, appellants fail to come to grips with the distinction between a state's domestic relations laws and state health insurance law. As the Court of Appeals pointed out, Hawaii's Act "directly and expressly regulates employers and the type of benefits they provide employees" (Jur.St. Appx., p. A-9).

The ruling below is consistent with both ERISA preemption principles and Congress' goal in ERISA. To find that the Hawaii Act is included within the meaning of disability insurance law, or is otherwise exempt from ERISA, would lead to the emasculation of ERISA. The goal of Congress

was to preempt the field, with only narrow exemptions, in order to prevent inconsistent and conflicting regulation of such plans under state law (see supra, pp. 5, 9). Without this broad preemption, all states, by simply enacting laws such as Hawaii's, would be free to regulate the benefits and administration of employee benefit plans. Under appellants' theory, all employee benefit plans regulated by such state laws would then be exempt from ERISA as plans "maintained solely for the purpose of complying with applicable * * * disability insurance laws" (ERISA §4(b)(3); Jur.St. Appx. G, p. A-68). The practical result would be that state health insurance laws such as Hawaii's would preempt ERISA—the antithesis of Congress' goal.

CONCLUSION

For the foregoing reasons, the questions presented are so unsubstantial as not to need further argument and the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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